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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VINTERACTIVE, LLC,

Plaintiff,

v.

OPTIREV, LLC,

Defendant.

OPTIREV, LLC,

Counterclaimant,

v.

VINTERACTIVE, LLC,

Counterdefendant.

Case No.: 3:15-cv-02903-SI

STIPULATED SETTLEMENT
AGREEMENT



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1 Plaintiff/Counterdefendant VinterActive, LLC, (hereafter "Plaintiff") and
2 Defendant/Counterclaimant, OptiRev, LLC (hereafter "Defendant") hereafter collectively
3 referred to as the "Parties" or individually as the "Party" who, by and through their
4 undersigned counsel, state as follows:

5 WHEREAS, there is currently pending in the United States District Court, Northern
6 District of California, San Francisco Division, an action entitled *VinterActive, LLC, v.*
7 *Optirev, LLC*, and docketed as Case No. 3:15-cv-02903-SI (the "Action"). The Action
8 involves Plaintiff's claims for alleged copyright infringement relating to unauthorized
9 copying of websites developed and owned by VinterActive, LLC, alleged unauthorized
10 access to a computer/system/server, alleged unauthorized copying and theft of computer
11 files, alleged passing-off of Plaintiff's websites as being developed by OptiRev, LLC, and
12 alleged unjust enrichment for failure to fully compensate VinterActive, LLC, for the
13 development of websites;

14 WHEREAS, on June 22, 2015, Plaintiff filed its Complaint for (1) Copyright
15 Infringement, 17 U.S.C. § 101; (2) Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (3)
16 California Computer Crime Law, Cal. Penal Code § 502; (4) Cal. Bus. and Prof. Code §
17 14200; (5) Cal. Bus. and Prof. Code § 17200 (6) Cal. Trade Secrets Act; and (7) Unjust
18 Enrichment, alleging 23 causes of action total. Defendant specifically denies all of
19 Plaintiff's allegations of wrongdoing;

20 WHEREAS, on August 7, 2015, OptiRev filed its affirmative defenses and
21 counterclaims. Plaintiff specifically denies all of Defendant's allegations of wrongdoing;

22 WHEREAS, without admission by any party of any liability, and for the purpose of
23 compromise and settlement only, the Parties now wish to formally and forever resolve and
24 settle any and all claims, disputes and disagreements which exist, or which may exist,
25 between them which arise out of or are connected to the Action;

26 WHEREAS, the parties wish to resolve their dispute with respect to the use and
27 ownership of images and copy compiled for websites ("Website Materials") in copyright
28 applications and accompanying deposited materials filed by the Plaintiff. The parties agree

1 that payment of the amount noted below and execution of this Agreement serve solely as
2 a settlement between the parties, and is not intended and does not constitute an admission
3 of copyright infringement or other wrongdoing by the Defendants, nor approval by Plaintiff
4 for the use of any third-party images or software contained therein. In return for the
5 consideration given in this Agreement, Plaintiff agrees that the Website Materials, listed
6 below, may be utilized by the Defendant going forward. This agreement does not constitute
7 permission to utilize any third –party images or software requiring licensing from other
8 sources contained in those materials.

9 WHEREAS, the Parties also wish to resolve their dispute regarding the originality of
10 the computer code written by Plaintiff for use with the Website Materials (“CSS Code”),
11 listed below, submitted in copyright applications and accompanying deposited materials
12 filed by the Plaintiff. The Parties agree that the CSS Code Applications and the four
13 registered CSS Code copyrights shall remain the property of the Plaintiff, and shall not be
14 used by the Defendant without permission and appropriate licensing agreements.

15 WHEREAS, the Parties agree that this Agreement is intended to cover the entirety of
16 the Website Materials and the CSS Code, including the documents, text, graphics, images,
17 photographs, materials, trademarks, HTML code, CSS code, or any other programming
18 code, whether listed below or not, that Plaintiff and Defendant ever produced, collaborated
19 on, or otherwise worked on during their business relationship. Furthermore, Plaintiff agrees
20 that this Agreement covers the entire scope of Website Materials and the CSS Code,
21 including the documents, text, graphics, images, photographs, materials, trademarks, HTML
22 code, CSS code, or any other programming code, whether listed below or not, that Plaintiff
23 and Defendant ever produced, collaborated on, or otherwise worked on during their
24 business relationship, that would allegedly give rise to any State or Federal action, including
25 but not limited to claims for alleged violations of copyright, trademark, or intellectual
26 property by Defendant, related to or arising out of the present Action.

Website Materials:

VinterActiveSFMotelCapry Website SR1-2427193080
VinterActivePresidioInn Website SR 1-2427134519 (Copyright Registered)
VinterActive Oakley ComfortSuites Website SR 1-2427192670
VinterActiveHostelSF Website SR-2427134590
VinterActiveGreenwichInn Website SR 1-2427192740
VinterActiveGearParkway Website DR 1-2427193010
VinterActiveBerkeleyRI Website SR 1-2427089401
VinterActiveBenbowinn Website SR 1-2427192940
VinterActiveOptiRev Website SR 1-2427192810

CSS Code:

VinterActiveSFMotelCapriCSS SR 1-2427193155 (Copyright Registered)
VinterActivePresidioInn SR-12427134555 (Copyright Registered)
VinterActive Oakley ComfortSuites CSS SR 1-2427192705 (Copyright Registered)
VinterActiveHostelSF CSS SR 1-2427192625 (Copyright Registered)
VinterActiveGreenwichInn CSS SR 1-2427192775
VinterActiveGearParkway CSS SR 1-2427193045
VinterActiveBerkeleyRI CSS SR 1-2427089508
VinterActiveBenbowinn CSS SR 1-2427192975 (Copyright Registered)
VinterActiveOptiRev CSS SR 1-2427192865

WHEREAS, the Parties intend that this Agreement shall constitute a complete settlement and compromise of the Action and all potential or actual claims of the Parties against each other based on or arising out of in whole or in part, the events alleged in the Complaint and/or which in any way constitute(d) part of this Action. The Parties, having agreed upon the terms of a settlement in this action, set forth the essential terms of the agreement. This Agreement shall constitute the mutual and final understanding between the

1 Parties with respect to the subject matter herein.

2 WHEREAS, Plaintiff and Defendant, through their authorized representatives, and
3 without any admission or adjudication of the issues of fact or law with respect to Plaintiff's
4 claims, have reached a settlement resolving the claims raised in Plaintiff's Complaint and
5 the Counterclaims raised in Defendant's Answer.

6 NOW, THEREFORE, for good and valuable consideration, the adequacy and
7 sufficiency of which is hereby acknowledged, the Parties hereby stipulate and agree as
8 follows:

9 **AGREEMENT**

10 1. Paragraphs A through D, inclusive, of the above Recitals are fully
11 incorporated herein and are true and correct. These Recitals are intended and shall be
12 deemed and construed to be a material and integral portion of this Agreement.

13 2. In consideration for the agreements and releases contained herein, Plaintiff
14 shall receive payment in the total sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00)
15 in full and final settlement of any and all claims which were or could have been asserted in
16 the Action, as well as all other Plaintiff's claims against the Defendant based on, or arising
17 out of, in whole or in part, the events alleged in the Complaint and/or which in any way
18 constitute(d) part of this Action.

19 The payment shall be structured as follows:

20 a. \$9,000, payable to Bryan St. Amant, as CEO and President of
21 VinterActive, LLC, and \$6,000 payable to Laura C. Rosenthal, Attorney at Law, on behalf
22 of Bernard IP Law, LLC, within 20 days of the Execution of the Agreement.

23 b. The Parties shall execute such documents as necessary and appropriate
24 to comply with the terms of the agreement.

25 c. The Parties mutually agree that the facts and circumstances of this
26 Action and Agreement will remain confidential, with exceptions, as detailed in paragraph
27 28, below.

28 3. Within five days of the final payment set forth in paragraph 2(b) above,

1 Plaintiff will cause its claims against Defendant to be dismissed, and Defendant will cause
2 its counterclaims against Plaintiff to be dismissed, with prejudice, by filing a jointly fully
3 executed Request for Dismissal with the court, so that each party can be provided with a
4 court-endorsed copy of the Request for Dismissal.

5 4. Plaintiff agrees and represents that it shall not, at any time hereafter,
6 commence, maintain, or prosecute any action, suit, proceeding, investigation, complaint,
7 claim, grievance or charge with any court, administrative agency, arbitrator, or any other
8 body or person, whether Federal, State, contractual or otherwise, or aid or assist others in
9 prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or
10 charge, except in response to governmental agency or court inquiries as compelled by legal
11 process, against Defendant, or the employees, officers, directors, insurers, attorneys, or
12 other representatives of this Defendant, based in whole or part upon, or arising out of or in
13 any way connected, in whole or in part, with the events alleged in the Complaint and/or
14 which in any way constitute(d) part of this Action.

15 5. Defendant agrees and represents that it shall not, at any time hereafter,
16 commence, maintain, or prosecute any action, suit, proceeding, investigation, complaint,
17 claim, grievance or charge with any court, administrative agency, arbitrator, or any other
18 body or person, whether Federal, State, contractual or otherwise, or aid or assist others in
19 prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or
20 charge, except in response to governmental agency or court inquiries as compelled by legal
21 process, against Plaintiff, or the employees, officers, directors, insurers, attorneys, or other
22 representatives of this Plaintiff, based in whole or part upon, or arising out of or in any way
23 connected, in whole or in part, with the events alleged in its counterclaims asserted in its
24 Answer to the Complaint and/or which in any way constitute(d) part of this Action.

25 6. If any of the payments made under this Agreement result in tax consequences
26 for Plaintiff, then it shall be solely responsible for those tax consequences and for the
27 payment of any and all tax that may be due. In no event will the dollar amount of the
28 settlement to be paid under this agreement be changed or increased as a result of any tax

1 consequence to any of the Parties. Plaintiff agrees to indemnify and hold Defendant, its
2 attorneys, and their insurers harmless from any tax consequences to Plaintiff arising out of
3 the payments referred to in paragraph 2. Plaintiff is not relying on any statement,
4 representation, or advice from Defendant, its attorneys, insurers, or representatives as to tax,
5 or any other, consequences of this Agreement.

6 7. The Parties will bear their own attorneys' fees and costs incurred to date.

7 8. In consideration of the mutual promises set forth in this Agreement, and
8 except for the obligations to be performed under this Agreement, the Parties absolutely,
9 fully and forever release, waive, relinquish, and discharge each of Parties and their
10 successors, assigns, heirs, executors, administrators, personal representatives, members,
11 agents, employees, representatives, attorneys, subsidiaries, affiliates, and each of them (the
12 "Released Parties"), of and from any and all manner of action or actions, cause or causes of
13 action, suits, debts, liabilities, demands, wages, sums of money in controversy, damages,
14 accounts, reckonings, and liens of every kind or nature whatsoever whether known,
15 suspected or unsuspected which it shall or may have, own or hold, which it at any time
16 heretofore had, owned or held, or could, shall or may hereafter own, or hold, by reason of,
17 arising out of, or in connection with any matter, cause or thing whatsoever, including
18 without limitation such matters which relate to or in any way arise out of, or could relate to
19 or arise out of the facts and circumstances of the business relationship between Plaintiff and
20 Defendant. Except as to the executory provisions of this Agreement, the parties each
21 acknowledge they are aware it is the intention of the parties hereto, as to which intention
22 each of the parties agree, that, upon execution by the parties, this Agreement shall be
23 effective as a full and final accord and satisfaction in settlement of and as a bar to any and
24 all Claims heretofore referred to and released which any party hereto has, may have in the
25 future, or has had against the other party hereto. In connection with such waiver and
26 relinquishment, the parties hereto acknowledge that each is aware that it, or its attorneys,
27 may hereafter discover facts different from or in addition to facts now known or believed
28 true with respect to the subject matter of this Agreement, but that it is each parties' intention

1 hereby to fully, finally, absolutely and forever settle any and all Claims referred to which
2 do now exist, may exist or have existed between any of the parties to this Agreement, and
3 that, in furtherance of such intention, the Releases given shall be and remain in effect as full
4 and complete Releases, notwithstanding the discovery of any such different or additional
5 facts. Each of the parties does hereby waive and relinquish all rights and benefits each has
6 or may have under any unknown or future Claim to the fullest extent that each may lawfully
7 waive such rights and benefits pertaining to the subject matter of this Agreement, and
8 acknowledges that this waiver is a material inducement to the other party's execution of the
9 Agreement.

10 9. Plaintiff expressly waives all rights it has or may have under California
11 Business and Professions Code section 6149.5, which requires that a copy of the cover letter
12 accompanying the settlement funds paid as described in this release be sent to Plaintiff.
13 Plaintiff authorizes and directs that the settlement monies to be paid as described in this
14 release be sent/delivered as described in paragraph 2(a), above, on Plaintiff's behalf.

15 10. The Parties each waive the right to recover any attorneys' fees, costs of suit,
16 or any other expenses incurred by either party in pursuing or defending the claims in this
17 action. Should such lien claims arise related to this Action against the Plaintiff's settlement
18 proceeds provided by the Defendant, the Plaintiff agrees to resolve, litigate, or settle those
19 without further action against the Defendant, its attorneys, or its insurers.

20 11. The Parties acknowledge that there is a risk that subsequent to the execution
21 of this Agreement, the Parties may discover, incur, or suffer claims which were unknown or
22 unanticipated at the time this Agreement is executed, including, without limitation,
23 unknown or unanticipated claims which arise from, are based upon, or are related to the
24 Action or some aspect thereof, which if known by the Parties on the date of this Agreement
25 being executed, may have materially affected the Parties' decision to execute this
26 Agreement. The Parties expressly assume the risk of such unknown and unanticipated
27 claims and agree that the releases provided by this Agreement apply to all such claims.

28 12. With respect to the mutual releases described above, the Parties acknowledge

1 that they are familiar with section 1542 of the California Civil Code which provides as
2 follows:

3 **A GENERAL RELEASE DOES NOT EXTEND TO**
4 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW**
5 **OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME**
6 **OF EXECUTING THE RELEASE, WHICH IF KNOWN**
7 **BY HIM MUST HAVE MATERIALLY AFFECTED HIS**
8 **SETTLEMENT WITH THE DEBTOR.**

9 The Parties waive and relinquish any right or benefit which they have, or may have,
10 under California Civil Code section 1542 regarding all matters arising out of or in any way
11 connected with this Action and Plaintiff's claims, and as set forth in the Lawsuit.

12 The Parties understand and acknowledge that the significance and consequence of
13 this waiver of section 1542 of the California Civil Code is that even if they should
14 eventually suffer any additional damages arising out of the acts or omissions giving rise to
15 this Action, they will not be permitted to make any claim against each other.

16 The Parties indicate that they have read and understand the above waiver of the
17 provisions of California Civil Code section 1542 by initialing here:

18 _____
19 Rene Byck

20 _____
21 Bryan St. Amant

22 _____
23 Holly Michalek

24 13. As a condition of this Agreement, each of the Parties represents and warrants
25 that there has been no actual assignment or purported assignment or other transfer of any
26 claim or other matter or any interest which is being released by this Agreement. Further,
27 each of the Parties represent and warrant that they are sole owners and real parties in
28 interest regarding the claims and further matters being released in this Agreement.

14. Defendants have defended and denied the claims made by Plaintiff, and
Plaintiff has defended and denied the counterclaims made by the Defendants, and this
Agreement is entered into with the understanding that it is the result of a compromise of
disputed claims and shall never at any time for any purpose be considered an admission of

1 unknown or unanticipated claims which arise from, are based upon, or are related to the
 2 Action or some aspect thereof, which if known by the Parties on the date of this Agreement
 3 being executed, may have materially affected the Parties' decision to execute this
 4 Agreement. The Parties expressly assume the risk of such unknown and unanticipated
 5 claims and agree that the releases provided by this Agreement apply to all such claims.

6 12. With respect to the mutual releases described above, the Parties acknowledge
 7 that they are familiar with section 1542 of the California Civil Code which provides as
 8 follows:

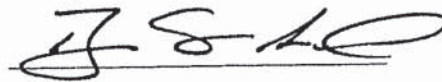
9 **A GENERAL RELEASE DOES NOT EXTEND TO**
 10 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW**
 11 **OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME**
 12 **OF EXECUTING THE RELEASE, WHICH IF KNOWN**
 13 **BY HIM MUST HAVE MATERIALLY AFFECTED HIS**
 14 **SETTLEMENT WITH THE DEBTOR.**

15 The Parties waive and relinquish any right or benefit which they have, or may have,
 16 under California Civil Code section 1542 regarding all matters arising out of or in any way
 17 connected with this Action and Plaintiff's claims, and as set forth in the Lawsuit.

18 The Parties understand and acknowledge that the significance and consequence of
 19 this waiver of section 1542 of the California Civil Code is that even if they should
 20 eventually suffer any additional damages arising out of the acts or omissions giving rise to
 21 this Action, they will not be permitted to make any claim against each other.

22 The Parties indicate that they have read and understand the above waiver of the
 23 provisions of California Civil Code section 1542 by initialing here:

24 _____
 25 Rene Byck

26 

27 Bryan St. Amant

28 _____
 Holly Michalek

13. As a condition of this Agreement, each of the Parties represents and warrants
 that there has been no actual assignment or purported assignment or other transfer of any

1 the truth of any of the allegations, claims, or contentions made by any Party against any
2 other Party. The Parties further warrant that this Agreement has been entered into in good
3 faith for the purpose of resolving such disputed and uncertain claims.

4 15. The Parties hereby acknowledge, agree and stipulate that each has the right to
5 enforce any provision of this Agreement by filing any appropriate action, proceeding or
6 motion including, without limitation, a motion pursuant to California Code of Civil
7 Procedure section 664.6 or analogous federal law in the appropriate department of the
8 United States District Court, Northern District of California, San Francisco Division, where
9 the action is venued. Notwithstanding the dismissal of this action, however, the Parties
10 further acknowledge, agree, and stipulate that the Court in the Action shall retain
11 jurisdiction to oversee compliance with the terms of this Agreement, reopen the Action after
12 they, or their claims, are dismissed, and to hear any motion brought pursuant to Code of
13 Civil Procedure section 664.6 or analogous federal law. (See *Kokkonen v. Guardian Life*
14 *Ins. Co. of Am.*, 511 U.S. 375 (1994)). Furthermore, the Parties will request that the Court
15 Order closing the case embody the settlement agreement and retain jurisdiction over the
16 settlement agreement pursuant to the above. To the extent that any party to this Agreement
17 must file any part of this Agreement with the Court, any party filing a motion to enforce the
18 Agreement shall only file that portion of this Agreement that is necessary to enforce the
19 Agreement.

20 16. Each of the Parties has obtained and utilized the advice of independent legal
21 counsel with regard to this Agreement, and each of the Parties has read this Agreement and
22 is fully aware of and understands its contents.

23 17. Each of the Parties represents and warrants that that party has had this
24 Agreement explained and described to that party in a language and in terms that are
25 understandable, and that they understand that this is a full and complete release.

26 18. Each of the Parties to this Agreement warrants that no promise or inducement
27 has been made or offered by any of the Parties hereto except as set forth herein and that this
28 Agreement is not executed in reliance upon any statement or representation of any of the

1 parties hereto or their representatives concerning the nature and extent of the injuries,
2 damages, or legal liability thereof.

3 19. This Agreement may be executed in any number of original counterparts.
4 Any such counterpart, when executed, shall constitute an original of this Agreement, and all
5 the counterparts together shall constitute one and the same Agreement. However, this
6 Agreement will not be deemed effective until each Party has executed at least one original
7 counterpart of the Agreement.

8 20. No waiver, modification, or amendment of any term, condition or provision of
9 this Agreement shall be valid or have any force or effect, unless made in writing and signed
10 by all the Parties.

11 21. This Agreement shall, in all respects, be interpreted, enforced and governed
12 by and under federal law, and to the extent that federal law may not be applicable then
13 under the laws of the State of California (see Paragraph 14 above), excluding its conflict of
14 law rules.

15 22. This Agreement (after full execution and delivery) memorializes and
16 constitutes the entire agreement and understanding between the Parties and supersedes and
17 replaces all prior negotiations, proposed agreements, and agreements, whether written or
18 unwritten.

19 23. This Agreement is and shall be binding upon and shall inure to the benefit of
20 predecessors, subsidiaries, successors, assigns, parties, agents, officers, employees,
21 associates, legal representatives, heirs, insurers, executives, and/or administrators of each of
22 the parties to the Agreement.

23 24. Each and every provision of the Agreement is severable from each and all of
24 the other provisions of the Agreement. In the event that any provision of the Agreement is
25 found by the Court to be invalid or unenforceable, the remaining provisions of the
26 Agreement shall nonetheless remain in full force and effect.

27 25. This Agreement is the result of arm's length negotiations. The Parties
28 acknowledge that (1) this Agreement and its reduction to final form is the result of

1 extensive good faith negotiations between the parties to it; (2) the Parties have carefully
2 reviewed and examined this Agreement for execution; and (3) any statute or rule of
3 construction that ambiguities are to be resolved against the drafting party should not be
4 employed in the interpretation of this Agreement.

5 26. The Parties agree that part of the consideration for this Agreement is that the
6 Parties shall not publicly disparage or make any public statement adverse to the other Party
7 or to any of their respective properties or interests, or otherwise take any action which could
8 reasonably be expected to adversely affect the other Party's reputation or public image, or
9 assist any third party in so doing. For purposes of this Agreement, the term "disparage" and
10 "disparaging" shall mean derogatory statements, whether written (paper or electronic
11 format) or oral, regarding the other Party, including but not limited to this Agreement,
12 business, client(s), product(s), service(s), or operations, and the like. The Parties agree and
13 acknowledge that this non-disparagement provision is a material term of this Agreement,
14 the absence of which would have resulted in one or both Parties not entering into this
15 Agreement.

16 27. This Agreement may be used by any one or more of the Parties as a full and
17 complete defense to, and the parties hereby consent that it may be used as the basis for an
18 injunction against, any action, suit, or proceeding based on any claim released by this
19 Agreement as to any one or of the Parties.

20 28. If litigation or any other legal proceeding is instituted to interpret or enforce
21 this Agreement, the Agreement will be construed as if all parties to this Agreement drafted
22 the same. This Agreement may be introduced as evidence and attached to a pleading in any
23 such action. The party prevailing in such litigation shall be entitled to reasonable attorneys'
24 fees incurred in addition to any other relief granted. The Court shall retain jurisdiction over
25 the Action to enforce this Agreement.

26 29. As a consideration and part of this Agreement, the Parties, their heirs,
27 executors, administrators, attorneys and agents, spouses and assigns or representatives of
28 any kind, agree that from the Execution of this Agreement and thereafter, to keep the terms

1 of this Agreement, including, but not limited to, the settlement amount, the terms and
2 conditions of this Agreement, and the negotiations leading to it, including any previously
3 unknown information learned therein about the Parties, confidential, and not to divulge the
4 contents of this Agreement, nor the settlement amount, to any person or entity. The Parties
5 agree that no disclosure or statement shall be made to third parties concerning the outcome
6 of the Action, other than stating that the Action was settled, and the terms are confidential,
7 with the exception of any required disclosure (1) for tax purposes or by any government or
8 administrative laws, statutes, or regulations; (2) as necessary to enforce the terms of
9 Agreement; (3) by the court or any other legal proceeding; and (4) to the attorneys or
10 representatives for the Parties in this action.

11 Furthermore, the Parties, their heirs, executors, administrators, attorneys and agents,
12 spouses and assigns or representatives of any kind, including any court reporting services,
13 agree that from the Execution of this Agreement and thereafter, to keep this entire matter,
14 including, but not limited to, all documents, communications of any kind, written discovery,
15 document production, deposition transcripts and all exhibits thereto, if any, confidential,
16 and not to divulge their contents to any person or entity with the following exceptions (1)
17 for tax purposes or as required by any government or administrative laws, statutes, or
18 regulations; (2) as necessary to enforce the terms of Agreement or Stipulated Judgment; (3)
19 to the court or as required by any other legal proceeding; or (4) to the attorneys or
20 representatives for the Parties in this action.

21 30. The terms of this Agreement shall become effective upon entry of an order by
22 the Court ratifying the Agreement.

23
24 **THE PARTIES HEREBY WARRANT THAT THEY HAVE READ THIS**
25 **STIPULATED SETTLEMENT AGREEMENT IN ITS ENTIRETY AND FULLY**
26 **UNDERSTAND AND APPRECIATE ITS TERMS AND THEIR CONSEQUENCES.**
27 **ADDITIONALLY, THIS AGREEMENT HAS NOT BEEN EXECUTED BY ANY OF**
28 **THE PARTIES BY REASON OF ANY UNDUE INFLUENCE, FRAUD, ORDURESS.**

AGREED TO:

injunction against, any action, suit, or proceeding based on any claim released by this Agreement as to any one or of the Parties.

28. If litigation or any other legal proceeding is instituted to interpret or enforce this Agreement, the Agreement will be construed as if all parties to this Agreement drafted the same. This Agreement may be introduced as evidence and attached to a pleading in any such action. The party prevailing in such litigation shall be entitled to reasonable attorneys' fees incurred in addition to any other relief granted. The Court shall retain jurisdiction over

the Action to enforce this Agreement.

29. As a consideration and part of this Agreement, the Parties, their heirs, executors, administrators, attorneys and agents, spouses and assigns or representatives of any kind, agree that from the Execution of this Agreement and thereafter, to keep the terms of this Agreement, including, but not limited to, the settlement amount, the terms and conditions of this Agreement, and the negotiations leading to it, including any previously unknown information learned therein about the Parties, confidential, and not to divulge the contents of this Agreement, nor the settlement amount, to any person or entity. The Parties agree that no disclosure or statement shall be made to third parties concerning the outcome of the Action, other than stating that the Action was settled, and the terms are confidential, with the exception of any required disclosure (1) for tax purposes or by any government or administrative laws, statutes, or regulations; (2) as necessary to enforce the terms of Agreement; (3) by the court or any other legal proceeding; and (4) to the attorneys or representatives for the Parties in this action.

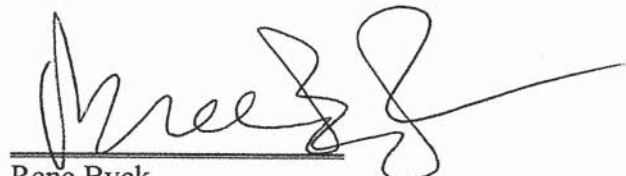
Furthermore, the Parties, their heirs, executors, administrators, attorneys and agents, spouses and assigns or representatives of any kind, including any court reporting services, agree that from the Execution of this Agreement and thereafter, to keep this entire matter, including, but not limited to, all documents, communications of any kind, written discovery, document production, deposition transcripts and all exhibits thereto, if any, confidential, and not to divulge their contents to any person or entity with the following exceptions (1) for tax purposes or as required by any government or administrative laws, statutes, or regulations; (2) as necessary to enforce the terms of Agreement or Stipulated Judgment; (3) to the court or as required by any other legal proceeding; or (4) to the attorneys or representatives for the Parties in this action.

30. The terms of this Agreement shall become effective upon entry of an order by the Court ratifying the Agreement.

**THE PARTIES HEREBY WARRANT THAT THEY HAVE READ THIS
STIPULATED SETTLEMENT AGREEMENT IN ITS ENTIRETY AND FULLY
UNDERSTAND AND APPRECIATE ITS TERMS AND THEIR CONSEQUENCES.
ADDITIONALLY, THIS AGREEMENT HAS NOT BEEN EXECUTED BY ANY OF
THE PARTIES BY REASON OF ANY UNDUE INFLUENCE, FRAUD, ORDURESS.**

AGREED TO:

Dated: March 28, 2017

A handwritten signature in black ink, appearing to read 'Rene Byck', written over a horizontal line.

Rene Byck
CFO for Defendant/Counterclaimant
OptiRev, LLC

Dated: March 28, 2017



Holly Michalek-Byck
CEO for Plaintiff/Counterdefendant
OptiRev, LLC

Dated: March __, 2017

Bryan St. Amant
CEO for Plaintiff/Counterdefendant
VinterActive, LLC

APPROVED AS TO FORM:

Dated: March __, 2017

KRANKEMANN | PETERSEN LLP

W. Christian Krankemann
Attorneys for Defendant/Counterclaimant
OptiRev, LLC

Dated: March __, 2017

BERNARD IP LAW, LLC

Laura C. Rosenthal
Attorneys for Plaintiff/Counterdefendant
VinterActive, LLC

1 regulations; (2) as necessary to enforce the terms of Agreement or Stipulated Judgment; (3)
2 to the court or as required by any other legal proceeding; or (4) to the attorneys or
3 representatives for the Parties in this action.

4 30. The terms of this Agreement shall become effective upon entry of an order by
5 the Court ratifying the Agreement.

6
7 **THE PARTIES HEREBY WARRANT THAT THEY HAVE READ THIS**
8 **STIPULATED SETTLEMENT AGREEMENT IN ITS ENTIRETY AND FULLY**
9 **UNDERSTAND AND APPRECIATE ITS TERMS AND THEIR CONSEQUENCES.**
10 **ADDITIONALLY, THIS AGREEMENT HAS NOT BEEN EXECUTED BY ANY OF**
11 **THE PARTIES BY REASON OF ANY UNDUE INFLUENCE, FRAUD, OR DURESS.**

12 **AGREED TO:**

13 Dated: March __, 2017

14 Rene Byck
15 CFO for Defendant/Counterclaimant
16 OptiRev, LLC

17 Dated: March __, 2017

18 Holly Michalek-Byck
19 CEO for Plaintiff/Counterdefendant
20 VinterActive, LLC

21 Dated: March 28, 2017

22 
23 Bryan St. Amant
24 CEO for Plaintiff/Counterdefendant
25 VinterActive, LLC

26 **APPROVED AS TO FORM:**

27 Dated: March __, 2017

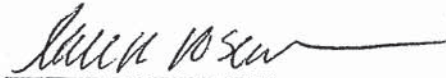
28 KRANKEMANN | PETERSEN LLP



W. Christian Krankemann
Attorneys for Defendant/Counterclaimant
OptiRev, LLC

Dated: March 28, 2017

BERNARD IP LAW, LLC



Laura C. Rosenthal
Attorneys for Plaintiff/Counterdefendant
VinterActive, LLC